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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,
LLC,

USA SECURITIES, LLC.

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case
No. BK-S-06-10725-LBR

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

**Reply In Support of Motion For Order
Approving Stipulation Between The
USACM Liquidating Trust And USA
Capital First Trust Deed Fund, LLC On
Overbid Allocation And Plan
Compromise Pursuant To Federal Rule
Of Bankruptcy Procedure 9019(A)**

Hearing: May 31, 2007
Time: 9:30 a.m.

The USACM Liquidating Trust ("USACM Trust") as successor to USA
Commercial Mortgage Company ("USACM"), and USA Capital First Trust Deed Fund,
LLC ("FTDF") entered into a proposed compromise that they ask the Court to approve.

One objection was filed – by BMC Group, Inc. ("BMC") – asking the Court to
direct payment to BMC on unspecified bills for unspecified services. BMC does not



1 oppose the compromise. BMC did not share its concerns with the USACM Trust or FTDF
2 Committee before its filing.

3 The objection partly explains the need for the compromise, when it states that BMC
4 submitted one bill to USACM for services to five Debtors, which Mesirow Interim
5 Financial Management caused USACM to pay without notice to the Official Committees
6 in these cases and without notice to the United States Trustee. Mesirow's failure to
7 allocate those bills resulted in the dispute that the USACM Trust and FTDF have now
8 compromised. That dispute is not resolved as to the other Debtors, particularly USA
9 Capital Diversified Trust Deed Fund, LLC ("DTDF") and it raises obvious issues *vis a vis*
10 Mesirow's fee application.

11 BMC says it has unpaid post-petition billings to USACM. It must acknowledge
12 that its post-Effective Date billings to the USACM Trust have been paid in due course.
13 The USACM Trust invites Debtors and BMC to address these issues to the Trust, rather
14 than in Court filings. But if BMC wants relief, it needs to file a motion.

15 BMC says it wants someone to agree to pay for certain functions it described as
16 Shared Services:

17 (1) maintaining a public website to display filings for all cases for use by all
18 interested parties; (2) processing and docketing of filed proofs of claim,
19 proofs of interest and amendments thereto including the recordation and
20 processing of claim withdrawals and transfers of claims pursuant to FRBP
21 3001(e); (4) [sic] maintaining the official claims register, monitoring of the
22 court docket to ensure any filings affecting proofs of claim or proofs of
23 interest are properly updated in the claims register; (5) maintaining
24 informational websites that communicate general information about the
25 cases; and (6) continuing to serve as the court's notice agent to mail notices
26 to the estates' creditors and parties in interest.

27 The problem for BMC and the USACM Trust is that numerous parties, including
28 the USACM Trust, creditors and interest holders of all estates, the post-Effective Date
Debtors, the USA Investment Partners, LLC trustee, post-Effective Date FTDF, DTDF,
and perhaps the Court and the general public, use one or more of these services on a
regular basis, particularly the public website for the docket. None are now charged for
that service. Despite the free rider problem, the Shared Services benefit the greater good.



1 Without negotiating in public, the USACM Trust will enter into a fair agreement
2 with BMC to continue the Shared Services, other than claims or noticing in the non-
3 USACM estates and which does not unduly allocate the Shared Services to the USACM
4 Trust.

5 In conclusion, the USACM Trust requests that the Motion be approved and BMC's
6 objection be overruled.

7 Dated May 26, 2007.

8 **LEWIS AND ROCA LLP**

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